

TOWN OF DURHAM

Planning and Zoning Commission
P.O. Box 428
Durham, Connecticut 06422-0428

MINUTES OF DECEMBER 16, 2009, MEETING

Present

Members: Lisa Davenport, Cathy Devaux, Frank DeFelice, George Eames, Richard Eriksen,
Chris Flanagan, Dave Foley, Joe Pasquale
Town Planner: Geoffrey Colegrove
Alternate: Campbell Barrett

Absent

Member: Ralph Chase
Alternates: Mike Geremia, Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Campbell Barrett was seated on the Commission in Ralph Chase's place.

Motion by Frank DeFelice, seconded by Cathy Devaux, to approve the agenda of the December 16, 2009, meeting as amended to include:

- 1) Extension for filing of mylars, Little Lane, LLC (7a)
- 2) Turkey Hill Road (7b)
- 3) Discuss dates for workshops with Attorney Steve Byrne in January 2010 (7c)

Motion carried unanimously.

2. Public Session

No business.

3. Thomas Russell, Request for Release of Bond, 759R New Haven Road

Motion by Richard Eriksen, seconded by Frank DeFelice, to approve a request for release of a bond in the amount of \$7,300.00 (not as previously stated, \$7,500,00) for T.J. Russell, New Haven Road. Motion carried, 7-1 with all in favor with the exception of Chris Flanagan (in abstention).

4. Request for 90-day Extension for Filing of Mylars, Little Lane, LLC

Geoffrey Colegrove briefly recapped the previous history on this site; the applicant is simply seeking a 90-day extension for the filing of the mylars.

Motion by Richard Eriksen, seconded by Frank DeFelice, to approve a request for a 90-day extension for filing of mylars for Little Lane, LLC. Motion carried unanimously.

5. Signature-Gordon, LLC, Turkey Hill, Request for Release of Bond

Motion by Richard Eriksen, seconded by Frank DeFelice, to approve a request for release of a \$20K performance bond for Signature-Gordon, LLC, Turkey Hill Road and convert the balance of \$10K to a maintenance bond. Motion carried unanimously.

6. Discuss Possible Dates to Meet with Attorney Steve Byrne for Land-use Workshop

After considerable discussion, which will include inviting other land-use commission/board members to also attend, the Commission determined that January 20, 2010, would be an optimal date to invite Attorney Steve Byrne to lead a land-use workshop/discussion. The meeting will be scheduled to begin half an hour early, at 7:00 p.m. The workshop takes between an hour and an hour and fifteen minutes.

Dave Foley was seated on the Commission at 7:43 p.m.

Geoffrey Colegrove will distribute copies of Attorney Byrne's book to all Commission members who have not yet received one.

7. Payment of Bills

Motion by Dave Foley, seconded by Frank DeFelice, to approve payment of the following bills:

- Attorney Steve Byrne - \$2,500.00 (Greenland Realty)
- Midstate Regional Planning Agency - \$112.80 (zoning regulation copies)
- Absolute Advantage - \$394.26 (minutes, December 2, 2009)
- Attorney Steve Byrne - \$487.50 (Arrigoni vs. P&Z)
- Attorney Steve Byrne - \$1,137.50 (District #13 zone change)
- Attorney Steve Byrne - \$675.00 (District #13 special permit)
- Attorney Steve Byrne - \$462.50 (District #13 site plan)
- Midstate Regional Planning Agency - \$9,544.58 (November expenses*)

Motion carried, 8-1, with all in favor with the exception of Chris Flanagan (in abstention).

* Geoffrey Colegrove explained that the November invoice incorporates a charge of about \$2,500 for GIS services; his bill for December will be reduced by this amount.

8. Approval of Minutes

Motion by Dave Foley, seconded by Cathy Devaux, to approve minutes of the December 2, 2009, meeting as presented. Motion carried, 5-4, with all in favor with the exception of Lisa Davenport, Chris Flanagan, Campbell Barrett, and Joe Pasquale (in abstention).

9. Zoning Enforcement Officer's Report

Geoffrey Colegrove advised that he had investigated a situation on Blue Hills Road regarding the keeping of animals. He had conducted a site visit with the town sanitarian, Bill Milardo. There appears to be no violation at the site.

An additional complaint has been received about a property on Parmelee Hill Road that was previously subject to investigation (keeping of rabbits on the property as well as possible other animals). A meeting with the property owner and first selectman, Laura Francis, is being planned.

Geoffrey Colegrove stated that he would like the Agricultural Committee to review the regulations, which have been in place for many years; they may require an update.

Geoffrey Colegrove also stated that a letter from Attorney Steve Byrne had been sent to Mr. Jackson regarding the situation at 303/305R Main Street. A cease-and-desist order was issued and Mr. Jackson has 15 days to bring the property into compliance; otherwise, enforcement action, including a permanent injunction being sought, will be pursued.

Geoffrey Colegrove advised that the traffic counters had been established on Mountain Road. The goal will be to collect data for at least two to two-and-a-half weeks. If it appears that snow is likely on Sunday, as forecast, Geoffrey Colegrove stated they would be removed and then reinstalled after the snow has cleared.

A letter providing the legal status of cases by Attorney Byrne will be distributed to Commission members.

Motion by Dave Foley, seconded by Frank DeFelice, to recess the regular meeting at 8:00 p.m. for the public hearings. Motion carried unanimously.

PUBLIC HEARING

1. Applicant/Owner: Greenland Realty, LLC.
Property Location: 10R Mountain Road, Assessor's Map #54, Parcel #1.9, Lot #3

Proposed Activity: Request for a modification to an existing site plan to include outside storage of construction equipment and vehicles and on-site fuel tanks

Present

Members: Lisa Davenport, Cathy Devaux, Frank DeFelice, George Eames, Richard Eriksen, Chris Flanagan, Dave Foley, Joe Pasquale

Town Planner: Geoffrey Colegrove

Alternate: Campbell Barrett

George Eames, Chairman, opened the public hearing and read the legal notice. Campbell Barrett was seated on the Commission in Ralph Chase's place.

Attorney Joan Molloy, of the firm Laughlin Fitzgerald in Wallingford, CT, addressed the Commission on behalf of the applicant. The applicant is seeking approval of modifications to the existing site plan—requesting the right to have outside storage for vehicles and construction equipment and to have an exterior fuel tank. She explained that a recent application was withdrawn when it became clear that time, under the statutes, was running out. This new application is essentially the same as the one submitted several months ago.

The proposed fuel tank, under direction from the fire marshal, will be positioned 50 feet away from the building (instead of 25 feet, as originally proposed). There will be a concrete pad (dimensions not yet finalized) and a fence around the tank. In addition, bollards are proposed for installation around the entire fuel tank/pad area. A fire extinguisher is required on the building per the fire marshal. An emergency shutoff is also on the plan.

Attorney Molloy then described the exterior ancillary parking (hatched marks on plan). This area is located to the east of the building.

The application was approved by the Inland Wetlands Commission with two conditions of approval.

- 1) rolloff containers and containers holding construction debris are not permitted in a regulated area (100 foot upland review area of the inland wetlands)
- 2) the aforementioned apron/concrete pad under the fuel tank is required in the unlikely event of a spill

Attorney Molloy then provided a brief summary of the history of development on this site. It is located in the Design Development District between two heavy industrial zones and a residential zone. There are four houses in close proximity to the site. On January 4, 2004, approval was provided by the Planning and Zoning Commission for a building and an office with outside storage. The only conditions of approval were that the site plan be in compliance with the

technical requirements contained in a memo from the town engineer and that drainage improvements be completed.

A letter from the town's engineering consultant, Nathan Jacobson, reflected on the cooperative effort between Greenland Realty and the town of Durham in making improvements to the intersection of Route 68 and Mountain Road (drainage and paving).

In March of 2005, Greenland Realty erroneously allowed another trucking company to use the property; this firm hauled waste products. This was not allowed under the original permit and the offending operation was removed; Attorney Molloy stated that it has been gone since May of 2005.

An application was made in 2005 for modifications; some of these requests were approved in September of 2005. Then, in 2006, the Commission determined that since Greenland Realty had not shown on the approved site plan that there was an intention to store vehicles outside the garage, this activity would not be allowed. That was one of the reasons for the current application. Attorney Molloy described the present economic situation, noting that instead of vehicles and heavy equipment being on construction sites, some of them are idle now and need to be stored. This is currently not allowed.

The second proposed activity is a diesel, double-walled fuel tank that features a leak-warning system. This will be installed on a concrete pad and surrounded by concrete bollards (or concrete blocks, if preferred). There will be emergency spill kits on the property in the unlikely event of a leak. The fuel tank has been approved by the local fire marshal and the state fire marshal's office. Attorney Molloy noted that the fire marshal's comments reflect the concerns of the fire chief as well.

Attorney Molloy indicated she would bring supporting documentation for the entire Commission to the next meeting (in was inadvertently left in her office). She noted that adjacent properties in the Design Development District have similar activities (including Murphy Pool, Nosal, and two A&S sites). She then explained that she wanted to respond to several issues raised by a neighbor, Diana Cruise.

With respect to the "wrong" type of trees being planted as a border, Attorney Molloy stated that she had in writing a letter detailing that arborvitae were the selected species (the letter was between her office on behalf of Greenland Realty and Mrs. Cruise's attorney). It happens that the deer have eaten the bottom-half of the trees. The trees were planted more densely than required (four feet/off center instead of six feet). However, she stated that her client has agreed to provide landscaping and will replace the arborvitae with white pines, voluntarily, when weather permits.

In terms of mechanical repairs and truck washing, Attorney Molloy stated that while a windshield wiper might be replaced, there were no mechanical repairs being made on the site and no washing of trucks taking place. She presented recent invoices reflecting truck repairs and washing for the record.

Dust was another area of concern. The original agreement was to install a driveway parallel to Mountain Road (by her client, at his own expense) so that the town of Durham would not have to deal with upgrading Mountain Road to allow trucks to get to her client's lot. She reminded Commissioners that the applicant did have legal frontage on Mountain Road. She stated that the original approval was for a gravel driveway. Of course, any vehicle driving down Mountain Road will kick up dust.

Attorney Molloy stated that allegations about rollofs are not true at this point and have not been on the site since 2005. There is no provision for a dumpster; there is not a lot of trash produced.

Attorney Molloy stated that her client authorized her to tell the Commission that he would be putting down millings on the driveway to ultimately create an impervious surface and reduce the amount of dust and complaints. This would be a voluntary act and could not begin until warm weather.

Frank DeFelice noted that the references to a previous application were somewhat confusing, especially in light of new Commission members. Dave Foley concurred.

A copy of the present application was provided.

Attorney Molloy clarified that only Greenland trucks would be fueled (and just diesel trucks, not pickup trucks). The tank is 4,000 gallons. There was some question as to the number of tanks (the application shows "tanks" – plural – Attorney Molloy will clarify this point, but she believes it is just one tank). At the continuation of the hearing, she will also clarify how the fuel is dispensed (mechanical or electrical pump).

Dave Foley suggested that the applicant be asked to submit all items referenced in the presentation this evening so that the application can be considered independent of any previous applications.

Lisa Davenport asked what type of equipment was being proposed for storage on the site and the maximum number of pieces that might be stored outside. Attorney Molloy explained that the company owns dump trucks, trailers, payloaders, shovels, processing equipment, etc.—generally fairly substantially sized equipment. She added that not more than ten pieces of equipment would be outside of the garage.

Richard Eriksen stated that the original site plan activity had ultimately evolved to a trucking company. For the fuel tank application to the state, the language used was "excavation contractor." He asked the meaning of this term. Attorney Molloy responded that Greenland operates a trucking company; one of the things done on site is to excavate material using the appropriate equipment. She noted that sometimes forms are incorrectly completed.

Attorney Molloy stated that she would clarify the description and how it affects the fuel tank permit.

To Richard Eriksen's query as to whether the proposed application includes hours of operation, Attorney Molloy stated that nothing was being submitted with regard to this. The site is not currently subject to any hours of operation.

Richard Eriksen stated that with the additional uses, it may be appropriate to impose hours of operation (i.e., for an excavation contractor).

Richard Eriksen asked about an on-site dumpster. Attorney Molloy indicated that one is not proposed; garbage is kept inside the garage and removed as necessary.

Attorney Molloy agreed with Richard Eriksen's statement that truck washing is not allowed. That is an existing condition on the site plan.

Richard Eriksen stated that he would like the white pine buffer (replacing the arborvitae one) to be a part of the site plan with a planting schedule.

Joe Pasquale asked for clarification about trucks accessing the fueling area. Attorney Molloy explained that there are two ways into the site, but the most likely path would bring trucks up along the west side of the building, then pulling into the fueling area. To Joe Pasquale's query regarding lighting, Attorney Molloy stated that some of the exterior lighting facing west had been removed because it created disturbances for the neighbors. She also stated that motion detectors had been attempted, but that deer and wildlife traveling through the property at night were setting it off.

Joe Pasquale asked how many times a day refueling would take place. Attorney Molloy stated that she would obtain the answer to this question. Only trucks belonging to Elite Trucking (owned by Greenland Realty) would be allowed to fuel up at the site.

Chris Flanagan asked why the tank wasn't being proposed for in-ground placement, as gas stations have. Attorney Molloy stated that the EPA has found the proposed tank to be an acceptable alternative; it also allows observation and quicker leak detection. Chris Flanagan noted how catastrophic it would be if there were a major fuel spill at ground level. Attorney Molloy indicated that the fire marshal had reviewed/approved the proposed plan and that insurance purposes will require safe installation with concrete bollards surrounding the tank. The applicant is prepared to install whatever the Commission prefers (bollards or blocks).

Chris Flanagan asked about the millings proposed for the road, wondering if curbing and drainage would need to be added. Attorney Molloy stated that there is a general move away from curbing, so as to allow sheet flow. Water draining through vegetation/infiltration is a low-impact design that is preferred to discharging a large quantity of stormwater at a higher velocity through forced drainage. The millings would fill in over time, creating an impervious surface.

Geoffrey Colegrove noted that the entire transfer station has millings; they do initially allow for drainage, but eventually become impervious. He cited several subdivisions (Berten, Old Yankee Way) that do not have curbing and low-impact drainage.

Campbell Barrett asked for more historical details regarding the bills presented for truck repair and washing. Attorney Molloy stated that she would obtain additional invoices.

Diana Cruise, Mountain Road, addressed the Commission. She presented photographs that depict washing of trucks, noting that neighbor Dave Dingwell witnessed this as well. She said that there are already large trailers on site and that the cab of a truck pulling a low-bed trailer idled adjacent to her driveway for over an hour on December 12. She noted that there are repairs being made to vehicles, that trucks are parked outside presently, and that there was a recent parade of pickup trucks to the property, all subsequently driving out with snow plows.

Diana Cruise pointed out that this activity is adjacent to a residential area, unlike the Nosal and Murphy Pool sites and other businesses on Ozick Drive. She stated that at the time the agreement was reached between herself and Greenland, she did not know the difference between arborvitae and white pines.

Dave Dingwell, 89R Mountain Road, addressed the Commission. He reiterated that this is a Design Development District and that while Murphy and Nosal have hours of operation, Greenland Realty does not. In addition, vehicles at those other sites go out at 7 a.m. and are back by 6 p.m., there is no noise problem, unlike the applicant's site. He stated his belief that heavy industrial equipment does not belong in a Design Development District. To not have hours of operation when immediately adjacent to a residential neighborhood does not make sense. He'd like to see restrictions placed on the activities (hours of operation) so that the site operates properly this time.

Joe Pasquale stated that he'd received a call from Mrs. Cruise earlier this evening and went onto the site, but that it was dark when he arrived. There was a report of an 18-wheel tractor-trailer and low-bed trailer being on site.

To Richard Eriksen's query, Geoffrey Colegrove indicated there would be results from the traffic counters at the next meeting.

Lisa Davenport asked for copies of the original proposal for 2004 for the next meeting. Prior Commission members had received a packet of information and old minutes, plus a timeline for approvals. This information will be provided to the new Commission members by Geoffrey Colegrove.

The Commission agreed to hold a site walk on Saturday, December 19, at 9:00 a.m. Jan Melnik will also attend and take attendance/prepare minutes at the recommendation of counsel.

Motion by Richard Eriksen, seconded by Dave Foley, to continue the public hearing of Greenland Realty, 10R Mountain Road, to January 20, 2010, meeting, with a site walk scheduled for December 19, 2009, at 9:00 a.m. Motion carried unanimously.

PUBLIC HEARING

2. Applicant/Owner: DiNatale Rentals, LLC.
Property Location: 593 Wallingford Road, Assessor's Map #44, Lot #12
Proposed Activity: Request for a special permit to allow automobile and equipment service in the heavy industrial zone

Present

Members: Lisa Davenport, Cathy Devaux, Frank DeFelice, George Eames, Richard Eriksen, Chris Flanagan, Dave Foley, Joe Pasquale

Town Planner: Geoffrey Colegrove

Alternate: Campbell Barrett

George Eames, Chairman, opened the public hearing and read the legal notice. Campbell Barrett was seated on the Commission in Ralph Chase's place.

Attorney John Corona addressed the Commission on behalf of Pat DiNatale. He stated that the applicant, Dan Forline, was also in attendance. He noted that this was the second step in the overall process. A few months ago, the Commission was asked to modify the use table for the heavy industrial zone to allow for vehicle and equipment repair. Following a public hearing and debate, the amendment to the use table was approved. This enables applicants to come forward and, by special permit, seek approval for their proposed activities.

The proposed site is a unit that is 30' x 45' in size near the back of the site (near the newly approved area where the horse crematorium will be). The unit accommodates two bays. Vehicles would be repaired inside the building only. The regulations require nine identified parking spaces (including a handicapped space) and these were noted on the plans.

In addition to the special permit from the Planning and Zoning Commission, the applicant is also required to obtain a permit from the Department of Motor Vehicles; in fact, the DMV cannot be approached until the Planning and Zoning Commission approves the application.

Attorney Corona stated that there are currently vehicle repair businesses in town in the commercial zone (Dean Autoworks, Durham Auto, etc.). These businesses are allowed to display and sell cars; this is not the case for the proposed application. The applicant will primarily work with commercial vehicles that are in service during the business day and, therefore, require repairs on evenings and/or weekends. No retail sales are allowed and there will be no outside storage. There is no intention to be an auto body repair/paint facility.

To Dave Foley's query regarding hours of operation, Attorney Corona indicated that none are proposed. It is not typical for there to be hours of operation in industrial zones (citing Durham Manufacturing, Commerce Circle, and the town garage).

The door will be closed as it is an indoor operation; this can be a condition of approval.

To Dave Foley's query regarding testing of brakes, Attorney Corona indicated vehicles would be taken out on the road for testing.

No signage is proposed. There is one bathroom and only one employee planned (parking will allow for up to two employees).

Attorney Corona and Pat DiNatale met with the fire marshal and the building official to discuss the need for fire-rated walls on the two interior walls abutting other units. Pat DiNatale is fully prepared to execute the installation of whatever type of walls/sheetrock the building official requires.

Lisa Davenport asked about the ability to have auto repairs on the site previously. Attorney Corona explained that this was not permitted prior to the recent change in the use table for the heavy industrial zone. She also asked about the need to remove hazardous materials. Attorney Corona indicated that there will be no dumpster on site; the business owner will transport trash himself. The Department of Motor Vehicles will require a storage area for waste oil; the DMV conducts inspections. Attorney Corona noted that when there are materials such as antifreeze or hazardous wastes, a contractor would be contacted.

Chris Flanagan asked for clarification of the special permit application and the change to the use table. Attorney Corona indicated that if an item is permitted in the use tables, an applicant can make an application for a special permit, which the Commission can then approve, deny, or approve with conditions.

Joe Pasquale asked if there were floor drains. There is one, according to Attorney Corona, but it is filled with cement.

Attorney Corona described the parking area—it will be process stone only.

Terry Peters, 670 Wallingford Road, addressed the Commission, asking how many units were in the entire complete. Attorney Corona stated there are 80. She then asked if there could be 80 separate auto repair businesses, especially based on the difficult economy. She added that she thought that the facility was set up for warehouse storage and not auto repair. Any applications would be considered by special permit.

A site walk will be held on Saturday, December 19, 2009, at about 9:30 a.m.

Motion by Richard Eriksen, seconded by Frank DeFelice, to continue the public hearing of DiNatale Rentals, LLC, 593 Wallingford Road, to January 6, 2010. Motion carried unanimously.

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Motion by Dave Foley, seconded by Frank DeFelice, to reconvene the regular meeting at 9:39 p.m. Motion carried unanimously.

10. Town Planner's Report

Geoffrey Colegrove indicated that the budgeting season had begun; funds were being allocated for the update to the Plan of Conservation and Development. Copies will be distributed to all new Commission members. This process should begin in subcommittee in the next few months, starting with open space and working with the new mapping.

Joe Pasquale stated that he was serving on the Agricultural Commission; he recommended a joint meeting with the Planning and Zoning Commission. Geoffrey Colegrove agreed this would be a good plan. It generally doesn't work to simply tie agricultural use to acreage (if there is lousy management on a large land mass, it is still a problem).

Joe Pasquale asked about the application that had been approved for Nosal on Ozick Drive, given some of the representations made by Attorney Molloy. Geoffrey Colegrove said that he didn't recall outside storage or fuel tanks.

Motion by Frank DeFelice, seconded by Dave Foley, to adjourn the meeting at 9:58 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
12/22/2009